

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.398 of 1997

Reserved on 3.12.2007

Date of decision 24.12.2007

Surinder Singh

Petitioner

Vs.

State of H.P. and others

Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?¹ Yes.

For the Petitioner: Mr.G.C.Gupta, Senior Advocate with
Mr.Mohinder Gautam, Advocate.

For the respondents: Mr.M.S.Chandel, Advocate General with
Ms.Meenakshi Sharma, Dy.A.G., for
respondents No.1 and 2.

Mr.Shrawan Dogra, Advocate, for respondent
No.3.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the predecessor-in-interest of the petitioner had applied on 26.12.1994 to the respondents for the grant of permission for construction of three storeyed commercial building over the existing single storey plus parking place and addition in ground floor on Khasra Nos. 281, 284, 288 to 310 and 312 to 318 at Bright Land, Cosy Nook Estate, Shimla-3

It appears from the pleadings of the parties that the matter remained under consideration of the respondents and ultimately the

¹ Whether reporter of local papers is allowed to see the judgment? Yes.

permission was declined by the respondent No.2 on 29.12.1997 primarily on the ground that the proposal falls in banned area of Shimla Planning Area. The petitioner preferred an appeal against the decision dated 29.12.1997 before the respondent No.1 under Section 32 of the Himachal Pradesh, Town and Country Planning Act, 1977, hereinafter referred to as the Act. The appeal preferred by the petitioner was rejected by the respondent No.1 on 1.3.2000.

Mr.G.C.Gupta, senior counsel assisted by Mr.Mohidner Gautam, Advocate had strenuously argued that the order dated 1.3.2000 is not a speaking order. He further contended that it is incumbent upon the authorities exercising quasi judicial powers to pass a speaking or well reasoned order taking into consideration all the grounds mentioned in the appeal. The learned Advocate General has supported the order dated 1.3.2000.

I have heard the learned counsel for the parties and perused the record carefully.

The predecessor-in-interest of the petitioner had applied for grant of permission on 26.12.1994. The planning permission for construction sought by the predecessor-in-interest of the petitioner was rejected by the respondent No.2 on 29.12.1997. The petitioner had assailed the order dated 29.12.1997 before the respondent No.1. The petitioner had raised as many as two grounds in his appeal, namely, (a) that the permission will be deemed to have been sectioned and (b) the reasons assigned for rejecting the case of the petitioner were not in accordance with the provisions of the Act and the construction for which the planning permission was required by the petitioner would neither cause any obstruction nor create any congestion.

The respondent No.1 discharges quasi judicial functions and was required to apply his mind by taking into consideration the grounds raised

in the appeal as well as the pleas raised at the time of hearing of the appeal. The orders passed by the quasi judicial authorities-Appellate Authorities should be speaking/reasoned orders, more particularly when the same are assailable before the higher courts. The appeal has been rejected in a very cryptic manner which runs into a paragraph comprising of six lines only.

The contention raised by the petitioner in the appeal that it was a case of deemed sanction had not been addressed to in the decision dated 1.3.2000. The plea raised by the petitioner that there would not be any congestion in the area has also been over looked by the appellate authority.

Their Lordships of the Supreme Court have held in the following cases that the quasi judicial authorities/Appellate Authorities must pass a speaking order.

The Hon'ble Supreme Court has held in **M/s. Travancore Rayons Ltd. v. The Union of India and others**, AIR 1971 Supreme Court 862 that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power. Their Lordships have held as under:-

“In this case the communication from the Central Government gave no reasons in support of the order; the appellant Company is merely intimated thereby that the Government of India did not see any reasons to interfere “with the order in appeal”. The communication does not disclose the “points” which were considered, and the reasons for rejecting them. This is a totally unsatisfactory method of disposal of a case in exercise of the judicial power vested in the Central Government. Necessity to give sufficient reasons which disclose proper appreciation of the

problem to be solved, and the mental process by which the conclusion is reached in cases where a non-judicial authority exercises judicial functions, is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, this Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The Court insists upon disclosure of reasons in support of the order on two grounds: one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous: the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power.”

Similarly, their lordships of the Hon’ble Supreme Court have held in **The Siemens Engineering and Manufacturing Co. of India Ltd., v. The Union of India and another**, AIR 1976, Supreme Court 1785, that quasi-judicial order must be supported by reasons. Their Lordships have held as under:-

“Before we part with this appeal, we must express our regret at the manner in which the Assistant Collector, the Collector and the Government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi-judicial proceedings and so also were the proceedings in revision before the Collector and the Government of India. Indeed, this was not disputed by the learned counsel appearing on behalf of the respondents. It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it

makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with *N. M. Desai v. Tessteels Ltd.*, C.A. No.245 of 1970 decided on 17-12-1975 (SC). But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated 8th December, 1961 which were repeated in the subsequent representation dated 4th June, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would

not satisfy the requirement of law. The Government of India also failed to give any reasons in support of its order rejecting the revision application. But we may presume that in rejecting the revision application, it adopted the same reason which prevailed with the Collector. The reason given by the Collector was, as already pointed out, hardly satisfactory and it would, therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. We hope and trust that in future the Customs Authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned orders, so that those who are affected by such orders are assured that their case has received proper consideration at the hands of the Customs authorities and the validity of the adjudication made by the Customs authorities can also be satisfactorily tested in a superior tribunal or court. In fact, it would be desirable that in cases arising under Customs and Excise laws an independent quasi-judicial tribunal, like the Income-tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind.”

The Hon'ble Supreme Court has held in **State of West Bengal v. Atul Krishna Shaw and another**, *AIR 1990 Supreme Court 2205* that unless adequate reasons are given, merely because it is an appellate authority, it cannot brush aside

the reasoning or findings recorded by the primary authority.

Their Lordships have held as under:-

“The appellate authority being final authority on facts is enjoined and incumbent upon it to appreciate the evidence; consider the reasoning of the primary authority and assign its own reasons as to why he disagrees with the reasons and findings of the primary authority. Unless adequate reasons are given, merely because it is an appellate authority, it cannot brush aside the reasoning or findings recorded by the primary authority.”

The Hon’ble Supreme Court has held in **Narinder Mohan Arya vs. United India Insurance Co. Ltd. and others**, (2006)4 SCC 713 that the appellate order should be a speaking order. Their Lordships have held as under :

“The appellate authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule 2 of Rule 37 of the Rules. The judgment of the civil court being inter parties was relevant. The conduct of the appellant as noticed by the civil court was also relevant. The fact that the respondent has accepted the said judgment and acted upon it would be a relevant fact. The authority considering the memorial could have justifiably come to a different conclusion having regard to the findings of the civil court. But, it did apply its mind. It could have for one reason or the other refused to take the subsequent event into consideration, but as he had discretion in the matter, he was bound to consider the said question. He was required to show that he applied his mind to the relevant facts. He could not have without expressing his mind simply ignored the same.

An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the

authority passing the same must show that there had been proper application of mind on his part as regard the compliance of the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.

In Apparel Export Promotion Council V. A.K. Chopra [1999(1) SCC 759] which has heavily been relied upon by Mr. Gupta, this Court stated:

"The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities." (Emphasis supplied)

The order of the appellate authority demonstrates total non-application of mind. The appellate authority, when the rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression 'consider' is of some significance. In the context of the rules, the appellate authority was required to see as to whether (i) the procedure laid down in the rules was complied with; (ii) the Enquiry Officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive."

In view of the observations made hereinabove, the writ petition is allowed. Annexure P-46 dated 1.3.2000 is quashed and set aside. The respondent No.1 is directed to decide the appeal afresh and to dispose of the same by passing a

speaking/reasoned order reflecting due application of mind. The appeal shall be decided by the respondent No.1 within a period of three months from today. To avoid delay the parties are directed to appear before the respondent No.1 on 7.1.2008.

No order as to costs.

December 24, 2007 (g)

(**Rajiv Sharma**), J